

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

CALSTRIP STEEL CORPORATION

Employer

and

Case 21-RC-20658

WESTERN STATES INDEPENDENT
NATIONAL UNION

Petitioner

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds¹:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act. Accordingly, it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act and claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

¹ The Petitioner and Intervenor each filed briefs in support of their positions, which have been duly considered.

All full-time and regular part-time hourly production and maintenance employees, including shipping and receiving clerks and truck drivers employed by the Employer at its facility located at 7140 Bandini Boulevard, Los Angeles, California; excluding all other employees, office clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

ISSUE AND CONCLUSION

The sole issue presented is whether the Petitioner is a labor organization within the meaning of the Act. At the hearing, the Intervenor and the Employer declined to stipulate that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. While the Employer took no position on this issue, the Intervenor contended that the Petitioner is not a labor organization inasmuch as it does not exist for the purpose of dealing with employees' wages, hours, and other terms and conditions of employment, but rather, exists solely for the personal benefit of its founder. For the reasons discussed below, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

FACTS

The record establishes that, for at least 40 years, the Intervenor has represented employees employed by the Employer in the petitioned-for unit. The latest

collective-bargaining agreement between the Employer and the Intervenor is effective from February 19, 2000, to February 18, 2005.

On or about May 9, 2003, approximately 20 individuals met for the purpose of forming the Petitioner. These individuals, some of whom were employed by Roy Hansen Junior Manufacturing, United Way, and the Employer, elected officers and adopted a constitution. Wesley Guajardo, who was elected National President of the Petitioner, had been an employee of the Intervenor but is currently on layoff status.

The minutes of the May 9 meeting were transcribed by the Petitioner's secretary-treasurer, Peggy Robinson. The minutes evidence that the articles of the proposed constitution were read by Robinson and thereafter voted upon by those in attendance. Upon completion of this process, the Petitioner's constitution was adopted.

Article II of the constitution sets forth the Petitioner's aims and objectives, and provides, in relevant part:

Section 1. To organize in this Independent Union, regardless of race, creed, color, sexual orientation, or nationality, all working men and working women eligible for membership.

Section 2. To exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(Petitioner Exhibit 2)

In addition to the Petitioner's organizing efforts among the employees of the Employer, the Petitioner has engaged in organizing employees of other employers. As of the date of the hearing, however, the Petitioner has not filed any other representation petitions or been recognized by any employer as the collective-bargaining representative of its employees.

ANALYSIS

Section 2(5) of the Act defines the term "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Thus, only three requirements must be met to establish the status of a labor organization under the Act. First, it must be an organization or group of any kind. Second, employees must participate in the organization.

Third, the organization must exist, at least in part, to deal with employers concerning wages, hours, or other working conditions. AutoZone, Inc., 315 NLRB 115, 116 (1994).

Application of these factors to the case herein demonstrates that the Petitioner has satisfied the statutory requirements to establish labor organization status. The Petitioner is comprised of a group of individuals that has held at least one meeting to elect officers and establish a constitution. Statutory employees were present and actively involved in this meeting and in the formation of the Petitioner. The adopted constitution establishes that one of the objectives of the Petitioner is to deal with employers concerning employees' terms and conditions of employment. Based upon the foregoing, and the record as a whole, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The Intervenor asserts that the Petitioner is not a statutory labor organization inasmuch as it exists solely for the personal benefit of its founder, Wesley Guajardo. In this regard, the Intervenor relies on the Board's decision in Marina Associates d/b/a Harrah's Marina Hotel

and Casino, 267 NLRB 1007 (1983), wherein the Board held that the petitioner was not a statutory labor organization.

In that case, the record revealed that the petitioner's officers had previously been convicted of various criminal acts, including racketeering, arson, attempted bribery, and fraud. At the hearing, the petitioner refused to make available necessary facts, documents, and witnesses subpoenaed by the employer, often offering elaborate and incredible explanations to justify their absence. Based upon the prior criminal records of the petitioner's officers and their lack of candor and cooperation at the hearing, the Board affirmed the Regional Director's conclusion that the petitioner and its parent organization were not organizations dedicated to the interests of the employees as bona fide collective-bargaining representatives, and therefore not labor organizations within the meaning of the Act.

The Intervenor's reliance on Marina Associates is misplaced. The Intervenor has proffered no evidence to establish a history of criminal activity by any officer of the Petitioner, nor did the Petitioner's officers appear deceitful or uncooperative at any time during the hearing. Further, as evidenced by its constitution, the Petitioner exists at least in part for the purpose of negotiating

employees' terms and conditions of employment, and not solely for the benefit of its founders.

The Intervenor further contends that the Hearing Officer committed prejudicial error when he refused to allow the Intervenor to question the Petitioner's officers regarding the Petitioner's income, source of assets, and other financial matters for the purpose of determining whether these officers were engaged in criminal activities or otherwise exploiting the Petitioner's assets for their own personal profit. I disagree and find that the Hearing Officer properly excluded this testimony inasmuch as it is irrelevant.

As discussed above, the Petitioner meets the statutory requirements to establish labor organization status. The Intervenor's line of questioning involving the Petitioner's income and assets was therefore irrelevant and properly excluded. Accordingly, the Intervenor's arguments are rejected.

There are approximately 33 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the

Board's Rules and Regulations. Eligible to vote are those in the bargaining unit who are employed during the payroll period ending immediately preceding the date of this Decision, including all employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented by **Western States Independent National Union; United Steelworkers of America, AFL-CIO, CLC; or Neither.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in each unit shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359(1994). In order to be timely filed, such list must be received in the NLRB Region 21 Regional Office, 888 South Figueroa Street, Ninth Floor, Los Angeles, California 90017, on or before November 14, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations

Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 21, 2003.

DATED at Los Angeles, California this 7th day of November, 2003.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

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